

TITLE III only of:

HELP AMERICA VOTE ACT OF 2002

Public Law 107-252

107th Congress

An Act

To establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes. <<NOTE: Oct. 29, 2002 - [H.R. 3295]>>

Be it enacted by the Senate and House of <<NOTE: Help America Vote Act of 2002.>> Representatives of the United States of America in Congress assembled,

**TITLE III--UNIFORM AND NONDISCRIMINATORY ELECTION  
TECHNOLOGY AND ADMINISTRATION REQUIREMENTS**

Subtitle A--Requirements

SEC. 301. <<NOTE: 42 USC 15481.>> VOTING SYSTEMS STANDARDS.

a. Requirements.--Each voting system used in an election for Federal office shall meet the following requirements:

1. In general.--

A. Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

i. permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

ii. provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the

error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

iii. if the voter selects votes for more than one candidate for a single office--

I. notify the voter that the voter has selected more than one candidate for a single office on the ballot;

II. notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

III. provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

B. A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

. establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

i. providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

C. The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

2. Audit capacity.--

. In general.--The voting system shall produce a record with an audit capacity for such system.

A. Manual audit capacity.--

- . The voting system shall produce a permanent paper record with a manual audit capacity for such system.
  - i. The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.
  - ii. The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.
- 3. Accessibility for individuals with disabilities.--The voting system shall--
  - . be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;
    - A. satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and
    - B. if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).
- 4. Alternative language accessibility.--The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).
- 5. Error rates.--The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.
- 6. Uniform definition of what constitutes a vote.--Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

- b. Voting System Defined.--In this section, the term ``voting system'' means--
  - 1. the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--
    - . to define ballots;
      - A. to cast and count votes;
      - B. to report or display election results; and
      - C. to maintain and produce any audit trail information; and
    - 2. the practices and associated documentation used--
      - . to identify system components and versions of such components;
        - A. to test the system during its development and maintenance;
        - B. to maintain records of system errors and defects;
        - C. to determine specific system changes to be made to a system after the initial qualification of the system; and
        - D. to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).
  - c. Construction.--
    - 1. In general.--Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.
    - 2. Protection of paper ballot voting systems.--For purposes of subsection (a)(1)(A)(i), the term ``verify'' may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.
  - d. Effective Date.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

SEC. 302./a> <<NOTE: 42 USC 15482.>> PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.

- a. Provisional Voting Requirements.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name

of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

1. <<NOTE: Notification.>> An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.
2. The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--
  - A. a registered voter in the jurisdiction in which the individual desires to vote; and
  - B. eligible to vote in that election.
3. An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).
4. If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.
5. At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.
  - . The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted. States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access

system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

b. Voting Information Requirements.--

1. Public posting on election day.--The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.
2. Voting information defined.--In this section, the term ``voting information'' means--
  - . a sample version of the ballot that will be used for that election;
    - A. information regarding the date of the election and the hours during which polling places will be open;
    - B. instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
    - C. instructions for mail-in registrants and first- time voters under section 303(b);
    - D. general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
    - E. general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.
  - c. Voters Who Vote After the Polls Close.--Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.
- d. Effective Date for Provisional Voting and Voting Information.-- Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

SEC. 303. <<NOTE: 42 USC 15483.>> COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.

- a. Computerized Statewide Voter Registration List Requirements.--
  - 1. Implementation.--
    - A. In general.--Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:
      - i. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
      - ii. The computerized list contains the name and registration information of every legally registered voter in the State.
      - iii. Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
      - iv. The computerized list shall be coordinated with other agency databases within the State.
      - v. Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
      - vi. All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
      - vii. The chief State election official shall provide such support as may be required so that local election officials are able

to enter information as described in clause (vi).

viii. The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

B. Exception.--The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

2. Computerized list maintenance.--

. (A) In general.--The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

0. If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

1. For purposes of removing names of ineligible voters from the official list of eligible voters--

1. under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

2. by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

2. Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter



Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

- A. Conduct.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--
  - 0. the name of each registered voter appears in the computerized list;
    - 1. only voters who are not registered or who are not eligible to vote are removed from the computerized list; and
    - 2. duplicate names are eliminated from the computerized list.
- 3. Technological security of computerized list.--The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.
- 4. Minimum standard for accuracy of state voter registration records.--The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:
  - . A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.
    - A. Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.
- 5. Verification of voter registration information.--
  - . Requiring provision of certain information by applicants.--
    - 0. In general.--Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or

processed by a State unless the application includes--

0. in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or
  1. in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.
  1. Special rule for applicants without driver's license or social security number.--If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.
  2. Determination of validity of numbers provided.--The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.
  - A. Requirements for state officials.--
0. <<NOTE: Contracts.>> Sharing information in databases.--The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an

agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

1. Agreements with commissioner of social security.--The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).
- B. Access to federal information.--Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:
  6. The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002--
  0. <<NOTE: Contracts.>> enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and
    1. <<NOTE: Confidentiality.>> include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.
    - A. Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.
    - B. <<NOTE: Procedures.>> The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.
    - C. For purposes of this paragraph--

- O. the term 'applicable information' means information regarding whether--
  - O. the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and
    - 1. such individual is shown on the records of the Commissioner as being deceased; and
    - 1. the term 'State driver's license agency' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.
  - D. Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).
- E. Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. <<NOTE: Penalties.>> Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an

officer, shall be guilty of a felony and upon conviction there of shall be fined or imprisoned, or both, as described in section 208.''.

F. Special rule for certain states.--In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

b. Requirements for Voters Who Register by Mail.--

1. In general.--Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

. the individual registered to vote in a jurisdiction by mail; and

A. (i) the individual has not previously voted in an election for Federal office in the State; or (ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

2. Requirements.--

. In general.--An individual meets the requirements of this paragraph if the individual--

0. in the case of an individual who votes in person---

0. presents to the appropriate State or local election official a current and valid photo identification; or

1. presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

1. in the case of an individual who votes by mail, submits with the ballot--

0. a copy of a current and valid photo identification; or

1. a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

A. Fail-safe voting.--

0. In person.--An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).

1. By mail.--An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).

3. Inapplicability.--Paragraph (1) shall not apply in the case of a person--

- . who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--

0. a copy of a current and valid photo identification; or

1. a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

- A. who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either--

0. a driver's license number; or

1. at least the last 4 digits of the individual's social security number; and

0. with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

- B. who is--

0. entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);
  1. provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or
  2. entitled to vote otherwise than in person under any other Federal law.
4. Contents of mail-in registration form.--
  - . In general.--The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:
    0. The question ``Are you a citizen of the United States of America?'' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
      1. The question ``Will you be 18 years of age on or before election day?'' and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.
      2. The statement ``If you checked `no' in response to either of these questions, do not complete this form.''
      3. A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.
    - A. <<NOTE: Notification.>> Incomplete forms.--If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a

timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

5. Construction.--Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before the date of the enactment of this Act to comply with such a provision after such date.
- c. Permitted Use of Last 4 Digits of Social Security Numbers.--The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).
- d. Effective Date.--
  1. Computerized statewide voter registration list requirements.--
    - . In general.--Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.
      - A. <<NOTE: Applicability.>> Waiver.--If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to ``January 1, 2004'' were a reference to ``January 1, 2006''.
  2. Requirement for voters who register by mail.--
    - . In general.--Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.
      - A. Applicability with respect to individuals.--The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

SEC. 304. <<NOTE: 42 USC 15484.>> MINIMUM REQUIREMENTS.



The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

SEC. 305. <<NOTE: 42 USC 15485.>> METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

#### Subtitle B--Voluntary Guidance

SEC. 311. <<NOTE: 42 USC 15501.>> ADOPTION OF VOLUNTARY GUIDANCE BY COMMISSION.

- a. In General.--To assist States in meeting the requirements of subtitle A, the Commission shall adopt voluntary guidance consistent with such requirements in accordance with the procedures described in section 312.
- b. Deadlines.--The Commission shall adopt the recommendations under this section not later than--
  1. in the case of the recommendations with respect to section 301, January 1, 2004;
  2. in the case of the recommendations with respect to section 302, October 1, 2003; and
  3. in the case of the recommendations with respect to section 303, October 1, 2003.
- c. Quadrennial Update.--The Commission shall review and update recommendations adopted with respect to section 301 no less frequently than once every 4 years.

SEC. 312. <<NOTE: Federal Register, publication. Public information. 42 USC 15502.>> PROCESS FOR ADOPTION.

The adoption of the voluntary guidance under this subtitle shall be carried out by the Commission in a manner that provides for each of the following:

1. Publication of notice of the proposed recommendations in the Federal Register.
2. An opportunity for public comment on the proposed recommendations.
3. An opportunity for a public hearing on the record.

4. Publication of the final recommendations in the Federal Register.